

# United States Department of Agriculture,

OFFICE OF THE SECRETARY.

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## NOTICE OF JUDGMENT NO. 1234.

(Given pursuant to section 4 of the Food and Drugs Act.)

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### MISBRANDING OF DR. KENNEDY'S WORM SYRUP, CHERRY BALSAM, AND HERCULINE TONIC.

At a stated term of the Circuit Court of the United States for the Southern District of New York, in the second circuit, begun and held for the district and circuit aforesaid on the first Monday in September, 1911, the United States Attorney for said district, acting upon a report by the Secretary of Agriculture, filed information in three counts in the aforesaid court against the Dr. David Kennedy Co., a corporation, alleging shipment by it, in violation of the Food and Drugs Act of June 30, 1906, on or about July 7, 1910, from the State of New York into the State of Massachusetts of quantities of certain drug products labeled worm syrup, cherry balsam, and herculine tonic, respectively, which were misbranded.

The worm syrup was labeled: (Outside carton) "Half dozen Dr. David Kennedy's Worm Syrup. The Best in the world. It is purely vegetable, perfectly harmless and always effective. Prepared by Dr. David Kennedy of Rondout, N. Y. Price 25 cts. a bottle. We hereby guarantee that this preparation is not adulterated or misbranded, under the Food and Drugs Act of June 30, 1906. Dr. David Kennedy's Sons, Rondout, N. Y. This preparation contains 5% of the purest grain alcohol." (Carton containing bottle): "Dr. David Kennedy's Worm Syrup. The best in the world. It is purely vegetable. Perfectly harmless, and the most effective known. Directions \* \* \* Prepared by Dr. David Kennedy, Rondout, N. Y. Price 25 cents per bottle. Prepared by Dr. D. Kennedy, Rondout, N. Y. Dr. David Kennedy's Genuine Preparations. Dr. Kennedy, M. D. Rondout, N. Y. We hereby guarantee that this preparation is not adulterated or misbranded under the food and drugs act of June 30th, 1906. Dr. David Kennedy's Sons, Rondout, N. Y. This preparation contains 5% of the purest grain alcohol." (On bottle): "Dr. D. Kennedy's Worm Syrup. Directions."

(same as carton). Guarantee statement on back of bottle and same as on cartons. (On circular): "It can not do the least harm. Active and sure in destroying all kinds of worms. The best worm medicine in the world. The number of these worms expelled by Dr. Kennedy's Worm Syrup is truly astonishing."

Analysis of a sample of said product, made by the Bureau of Chemistry of the United States Department of Agriculture, showed it to be a hydro-alcoholic solution of santonin (partly deposited), sugar, oil of anise, and undetermined matter. Misbranding was alleged in the first count of the information against this product because it was stated on the label that the article was harmless and contained no harmful ingredient, which statement was false and misleading, because said product consisted in part of santonin, an ingredient possessing toxic properties which are injurious to health.

The Cherry Balsam was labeled: (On carton): "Dr. David Kennedy's Cherry Balsam. For the cure of consumption and hemorrhage of the lungs, affections of the throat, such as colds, coughs, asthma, whooping-cough, croup, hoarseness and bronchitis. Dose: Adults, one teaspoonful three times a day. Children from five to fifteen drops three times a day. See circular for full directions. Prepared only by Dr. David Kennedy, Physician and Surgeon, Rondout, N. Y., U. S. A. Price, one dollar. D. Kennedy, M. D. Prepared by Dr. David Kennedy, Rondout, N. Y. Dr. David Kennedy's Cherry Balsam is guaranteed under the Food and Drugs Act of June 30, 1906. It contains 15.6% of pure grain alcohol, and each fluid ounce 1.42 grains powdered opium. U. S. P. Dr. David Kennedy's Sons, Rondout, N. Y. Dr. David Kennedy's Genuine Preparations, D. Kennedy, M. D., Rondout, N. Y." (On bottle): Practically same label as carton. (Blown in bottle): "Dr. David Kennedy's Cherry Balsam, Rondout, N. Y." (Circular packed with the bottle contained the following statements, among others): "It contains no deleterious drug and can be safely administered to the most debilitated adult or the most delicate child. It strikes at the very root of pulmonary disease."

Examination of a sample of said product, by the Bureau of Chemistry of the United States Department of Agriculture, showed it to be a hydro-alcoholic solution of opium, sugar, benzaldehyde, inorganic salts, color, and undetermined matter; alcohol 13.57 per cent by volume, opium 1.46 grains per fluid ounce. Misbranding was charged in the second count of the information against said product for the reason that the label stated the article to be harmless and to consist of cherry bark extract or balsam, when, in fact, said article did not contain any cherry bark extract or balsam, and the statement on the label was, therefore, false and misleading and calculated to deceive and mislead the purchaser.

The Herculine Tonic was labeled: (On carton): "Herculine Tonic. \* \* \* No. 943. Guaranteed under the Food and Drugs Act of June 30, 1906. Universally endorsed and prescribed by the Medical Profession. For appetite, health and vigor. It is inestimable in stimulating intellectual Activity, Preventing Exhaustion, Accelerating Respiratory Movement, Promoting Convalescence, Creating Digestion, Giving Tone to languid Nerves, and in removing all cerebral pains, hysteria in women and Neuralgia of the Heart. An efficient preparation of acknowledged merit. Discovered by David Kennedy, M. D., Kennedy Row, Kingston, N. Y., U. S. A. \* \* \* Removes fatigue of both body and mind. It is of the greatest service to singers and speakers for while bracing the nerves it strengthens the voice, causes absolutely no reaction or depressing after effects, but promotes appetite and aids digestion of feeble persons. Herculine Tonic—is most valuable and strengthening." (On bottle): "Herculine Tonic. Is unsurpassed for the cure of General Debility, Nervous weakness, Dyspepsia, Indigestion, Mental and Physical Exhaustion from Overwork, and all diseases arising from a Disordered condition of the Nerves, Stomach and organs of Digestion. It is unequalled in convalescence and for Strengthening the System during, or subsequent to an attack of fever \* \* \*."

Analysis of a sample of this product, made by the Bureau of Chemistry of the United States Department of Agriculture, showed it to consist of alcohol by volume 16 per cent, non-volatile matter 35.64 per cent, ash 2.24 per cent, reducing sugars (as invert) 19.98 per cent, quinine 0.065 per cent, water, glycerine, and undetermined matter 64.765 per cent. Misbranding was alleged in the third count of the information against this product for the reason that it was labeled so as to mislead and deceive purchasers in that the label failed to disclose either the percentage or volume of alcohol contained in the product.

On October 9, 1911, defendant pleaded guilty to all three counts of the information and was fined \$100 on each of the second and third counts, or a total of \$200. On the first count the court suspended sentence, stating that even in the case of a plea of guilty he would consider the substance of the offense, and did not believe that the statement on the label, to the effect that the article was harmless, was in any way inconsistent with the fact that the article contained santonin, because, although santonin is a poisonous article, it might have been, and probably was, in the product in such quantities as not to injure anyone.

JAMES WILSON,  
*Secretary of Agriculture.*

WASHINGTON, D. C., *December 5, 1911.*